HIGH COURT OF UTTARANCHAL AT NAINITAL.

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32(2)(b)

Description of the Case.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Criminal Appeal No. 36 of 2001
(Old No. 2115 of 1993)

Lakhpat Singh ...Appellant

Versus

State of Uttaranchal ...Respondent

Approved for reporting.

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~~Not approved for reporting.~~

Date of Decision 3rd December, 2004.

Initial of Judge. .

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Reserved

Criminal Appeal No. 36 of 2001
(Old No. 2115 of 1993)

Lakhpat Singh S/o Sri Jodh Singh
R/o Village Sartoli
Patwari Circle Nand Prayag
District Chamoli ….Appellant

Versus

State of Uttaranchal ….Respondent

Sri Rajindra Kotiyal learned counsel for the appellant
Sri Nandan Arya, learned A.G.A. for the State

Coram : Hon'ble P.C. Verma, J.
Hon'ble B.C. Kandpal, J.

(Delivered by Hon'ble B.C. Kandpal, J.)

This appeal has been preferred against the judgment and order dated 04.10.1993 passed by Sessions Judge, Chamoli in S.T. No. 24 of 1992 under Section 302/34 I.P.C., convicting the appellant for the offence under Section 302 and convicting thereon for life imprisonment.

The brief facts of the prosecution case are that on 19.07.1992 Nain Singh Bisht (PW 1) Pradhan Gaon Sabha Sartoli received an information that the dead body of Smt. Anandi Devi (hereinafter called 'the deceased') wife of accused/appellant – Lakhpat Singh was hanging on a rope in Bhukana Toke area of their village. Nain Singh Bisht (P.W.1) lodged the report on 19.07.1992 at 9:00 a.m. stated therein that knees of the dead body were rest on the earth and it appear that the dead body was kept over there by someone after committing murder on 17.07.1992.

On 19.07.1992, Prem Singh (PW 2) father of the deceased lodged written report with Patwari mentioning therein that on 18.07.1992 at about 2:00 P.M. Dhoom Singh came to his house in the village Shail-patti situated in Patwari area Langasu and told him that the deceased had servere pain in stomach. Dhoom Singh also asked Prem Singh to accompany him at once to village Sartoli. Prem Singh along with Dhoom Singh moved towards the village Sartoli at about 8:00 p.m. When they reached Sartoli, then the villager told Prem Singh, complainant that his daughter had already died by hanging. When Prem Singh reached near the house of the accused/appellant, co-accused Darwan Singh asked him not to agitate on the matter but Prem Singh refused to dispose of the body and made further query in the village, with the result he came to know that on 16.07.1992 in the night villagers had heard the hue and cry of the deceased. Hence, Prem Singh alleged that the accused/appellant Lakhpat Singh alongwith Dhoom Singh and Darwan Singh have murdered the deceased and after killing her later on hanged the dead body in the jungle.

On the basis of written report Ex. Ka. 2 which was filed by Prem Singh (P.W.2), Shashi Prasad Dimari (PW 7) lodged the First Information Report Ex. Ka. 4 on 19.07.1992 and registered the case under Sections 302 and 201 I.P.C. against the accused/appellants Lakhpat and co-accused Darwan Singh and Dhoom Singh. Thereafter, the Patwari went to the spot and recovered the dead body alongwith rope etc. the Investigating Officer prepared the inquest and inspected the spot and thereafter prepared site plan of the place where the dead body was recovered. The body was sent for post-mortem after preparing the inquest report.

On 20.07.1992 an autopsy was conducted on the body of Smt. Anandi Devi, deceased at 10:30 a.m. by Dr. S.K. Tripathi. The doctor opined that the death took place about three days before the time of autopsy. The doctor also found that rigor mortis passed off from both the extremities and the decomposition had stared. The doctor found following anti mortem injuries :-

> *"Ligature mark 28 cm at high up lace 2 cm wide over the neck in the middle of larynx ending on the mastorid. The mark was hard and parchment. On cutting was white and glitering."*

On the internal examination the doctor found that both the lungs were congested. Right chamber of heart was full of blood. The stomach was empty. Spleen and kidney were congested. The uterus contained pregnancy of 4-5 months. The doctor opined that the death was due to asphyxia on account of hanging.

The Investigating Officer recorded the statement of witnesses, thereafter arrested the accused/appellant alongwith other co-accused and got the statement of Bharat Singh (P.W.3) recorded in the court of SDM, Chamoli and after completion of the investigation, submitted the chargesheet against the accused/appellant and other co-accused on 28.10.1992.

After the submission of the chargesheet, the accused/appellant alongwith co-associates were committed to the court of Sessions and the learned Sessions Judge on 14.12.1992 framed the charges u/s 302/34 and 201 I.P.C. against the accused/appellant and his other associates. The appellant and other co-accused denied the charges leveled against them and claimed their trial.

The prosecution in order to support the case examined P.W. 1 Nain Singh, P.W. 2 Prem Singh, P.w. 3 Bharat Singh, P.W. 4 Balwant Singh, P.W. 5 Dr. S.K. Tripathi, P.W. 6 Bhupal Singh and P.W. 7 Patwari Sashi Prasad Dimri.

P.W. 1 Nain Singh proved the information of death Ex. Ka. 1 and P.W. 2 Prem Singh proved the written report Ex. Ka.2 P.W. 5 Dr. S.K. Tripathi proved post mortem report Ex. Ka. 3, P.W. 7 Shashi Prasad Dimri the I.O. proved prosecution papers – First Information Report Ex. Ka. 4, inquest report Ex. Ka.6 Site plan Ex. Ka. 7, recovery memo Ex. Ka. 8, chargesheet Ex. Ka. 14 and certain other documents by the Investigating Officer.

After the evidence of the prosecution was over, the statement of the accused/appellant and other co-accused Dhoom Singh and Darwan Singh were recorded u/s 313 Cr.P.C. The accused person did not adduce any evidence in their defence.

The trial Court after hearing the learned counsel for the defence and the prosecutor as well as after perusal of the record acquitted accused/Darwan Singh and Dhoom Singh for the charges under Sections 302/34 and 201 I.P.C. The trial Court vide the same judgment and order found accused/ Lakhpat Singh guilty for an offence under Section 302/34 I.P.C. and convicted him accordingly. The Trial Court sentenced the accused/appellant Lakhpat Singh for life imprisonment.

Feeling aggrieved by the aforesaid impugned judgment and order dated 04.10.1993, the accused/appellant filed an appeal before the High Court at Allahabad which has been transferred to this court for disposal after creation of Uttaranchal.

We have heard the learned counsel for the appellant and learned AGA and perused the record.

The first point for consideration in this appeal is whether the First Information Report which has been lodged reporting the commission of the offence, is anti timed or was lodged at the alleged time as has been stated by the prosecution.

Perusal of the record shows that Ex. Ka. 1 is the report which has been lodged by Nain Singh Bisht (P.W.1) Pradhan Gaon Sabha, Sartoli. This report shows that it was lodged in writing on 19.07.1992 at 9:00 A.M. Although the time appears to be doubtful as there appears to be overwriting on the word '1' which appears to have been corrected as '9'. As per this report, the incident is alleged to have taken place on 17.07.1992 but the deposition of Nain Singh Bisht (P.W.1) shows that he came to know about the death of Smt. Anandi Devi in the evening of 18.07.1992 and he lodged the report in writing in order to give it to the Patwari. This witness has stated in his cross-examination that he sent Kalyan Singh and Shyan Singh on 18.07.1992 to the Patwari for lodging the report. Therefore, it appears to be quite doubtful that in case, if Nain Singh Bisht (P.W.1) had already sent Kalyan Singh and Shyam Singh for lodging the report to the Patwari then what was the occasion with Nain Singh Bisht (P.W.1) to lodge the report in writing on 19.07.1992 at the alleged time 9:00a.m. Therefore, Ex. Ka. – 1 appears to be doubtful.

Nain Singh Bisht (P.W.1) in his cross-examination has stated that he was interrogated by the Patwari on the date of the preparation of inquest i.e. on 19.07.1992. But he has denied this suggestion given to him by the defence as to he gave the statement to the Patwari that he came to know about the death

of Smt. Anandi Devi on 19.07.1992 when he returned to his house. Out attention was invited towards the aforesaid statement which he gave before the Patwari during the investigation.

Shashi Prasad Dimri (P.W.7) Investigating Officer in his cross-examination has stated that Nain Bisht (P.W.1) told him in his statement under Section 161 Cr.P.C. that when he came to his house 19.07.1992 then he came to know that the wife of Lakhpat Singh had committed suicide by hanging herself.

The existence of the alleged First Information Report lodged with Patwari Circle Sartoli on 19.07.1992 at 9:00 a.m. again appears to be doubtful in the light of the inquest report. It reveals from the perusal of the inquest report that the First Information Report was lodged on 19.07.1992 at 1:00p.m. The name of the informant who first of all informed the Patwari circle with regard to the death of Smt. Anandi Devi, has been mentioned as Nain Singh Bisht (P.W.1) Pradhan Gaon Sabha Sartoli. Therefore, this entry made in the inquest report again is making the prosecution case doubtful.

In case, if the First Information Report lodged by Nain Singh Bisht (P.W.1) was given to the Patwari on 19.07.1992 at 9:00 a.m. then how the time of lodging the First Information Report in inquest report has been mentioned as 1:00 p.m.

Again, if we peruse the chick report Ex. Ka. 4 then it reveals that the First Information Report was lodged on 19.07.1992 at 4:00p.m. Therefore, in case if the First Information Report was lodged by Prem Singh at the police station on 19.07.1992 at 4:00 p.m. then how the inquest on the dead body could have been performed earlier i.e. at 1:00 p.m.

Hence, variation of the time in all the documents creates a serious doubt with regard to the existence of the First Information Report at the time as has been alleged by the prosecution.

In case, if we peruse the statement of Prem Singh (P.W.2) who is the father of the deceased Smt. Anandi Devi then it appears that he went to the place of occurrence on 18.07.1992 at about 8:00 to 9:00 p.m. and thereafter he handed over the written report to Patwari on 19.07.1992 at the place of occurrence. He has deposed in his statement before the court that he handed over the written report to the Patwari on 19.07.1992 when the Patwari came at the spot. Shashi Prasad Dimri (P.W.7) – Investigating Officer has stated that Prem Singh (P.W.2) handed over the written report to him after the preparation the inquest report on the body of the deceased and then he prepared the chick report. It is, therefore, quite clear that the written report which has handed over by Prem Singh to the Investigating Officer could not have been treated as First Information Report in any manner as the same is hit by the provision of Section 162 Cr.P.C.

Another important aspect of the case is whether the eyewitness account has corroborated, the prosecution case on the factum of the murder committed by the accused. It is important to mention here that Bharat Singh (P.W.3) has deposed in his statement before the court that he saw the accused/appellant Lakhpat Singh along with Dhoom Singh and Darwan Singh on 17.07.1992 at about 9:00p.m. taking Smt. Anandi Devi on their shoulder. He has also stated that Darwan Singh was having a burning stick in his hand for lightening the surroundings, Dhoom Singh and Lakhpat Singh were going

behind him. This witness has stated that he also heard due and cry from the house of Lakhpat Singh on 17.07.1992.

it is important to mention here that this witness saw the accused taking Smt. Anandi Devi on their shoulder in the night of 17.07.1992 even then he kept mum till 19.07.1992. This witness has stated that Prem Singh (P.W.2) had already arrived to his village on 18.07.1992 but he met him on 19.09.1992 and then he told Prem Singh (P.W.2) in the evening of 19.07.1992 that the accused had been taking Smt. Anandi Devi on their shoulder and also the accused – Lakhpat Singh caused injuries by beating Smt. Anandi Devi.

It is worthy to mention here that Bharat Singh (P.W.3) is the son-in-law of Prem Singh (P.W.2) and the deceased Smt. Anandi Devi was his sister-in-laws (Shali). This witness in spite of this close relation, kept mum and did not make any attempt to inform his father-in-laws i.e. Prem Singh (P.W.2) till the evening of 19.07.1992. This factor itself shows that this witness has not seen anything as has been stated by him before the court. This witness in his cross examination has stated that at the place of occurrence when he met Prem Singh (P.W.2) on 19.07.1992 then he did not tell the incident of 17.07.1992 either to Prem Singh (P.W.2) or to any other person of the village.

Again it is surprising that this witness did not visit the place from where the dead body of Smt. Anandi Devi was recovered on 18.07.1992. This witness in his cross examination has stated that he cannot tell the reason as to why the Patwari has mentioned in his statement under Section 161 Cr.P.C. that he visited the place from where the dead body was recovered on 18.07.1992 at 4:00p.m.

Shashi Prasad Dimri (P.W.7) who is the Investigating Officer of the case has deposed in his cross examination that Bharat Singh (P.W.3) had stated before him in his statement under Section 161 Cr.P.C. that he went to the place from where the dead body was recovered on 18.07.1992, therefore, the statement of both the witnesses i.e. Bharat Singh (P.W.3) and alleged eyewitness as well as Investigating Officer shows that Bharat Singh (P.W.3) even after getting the information with regard to the death of Smt. Anandi Devi did not visit the place of the occurrence of the place from where the dead body was recovered on 19.07.1992 which make the prosecution case quite doubtful.

Another witness i.e Prem Singh (P.W.2) who has been produced by the prosecution is the father of the deceased and he has stated that his daughter was being harassed by her in-laws after her marriage and he came to know about the death of her daughter on 18.07.1992 by one Dhoom Singh, but this witness has not stated any thing about the actual occurrence. He is not an eyewitness and he came to know about the death of his daughter only after his arrival in village Sartoli. Therefore, the only eyewitness account is of Bharat Singh (P.W.3) with regard to the particular fact that Smt. Anandi Devi was being taken by the appellant and is associates on their shoulder in the night of 17.07.1992 and before this incident some hue and cry from the house of Lakhpat Singh was also heard by Bharat Singh (P.W.3). This evidence does not find any corroboration by any other witness.

The evidence of Prem Singh (P.W.2) as well as Bharat Singh (P.W.3) again creates a doubt about the prosecution case in view of the fact that the statement of Prem Singh (P.W.2)

could not be recorded by the Investigating Officer on 19.07.1992. It is admitted fact that Prem Singh (P.W.2) reached before Patwari after the inquest report was prepared on 19.07.1992 and handed over the written report to him. In spite of this fact, the Investigating Officer did not record his statement and no proper explanation was given by the Investigating Officer in this regard. This witness is material witness and the Investigating Officer could have recorded his statement without committing any delay. As per the statement of Prem Singh (P.W.2) his statement was recorded on 21.07.1992, while he met the Investigating Officer on 19.07.1992 itself. Although the Investigating Officer has stated that he recorded the statement of Prem Singh (P.W.2) on 20.07.1992 but still the question arises before us as to why the delay in questioning his witness by the Investigating Officer was caused and the prosecution has not extended any proper explanation in this regard.

Again the deposition of Shashi Prasad Dimri (P.W.7) – Investigating Officer shows that he took the statement of Bharat Singh (P.W.3) under Section 161 Cr.P.C. on 22.07.1992. He has again stated that he cannot tell as to what time the statement of Bharat Singh (P.W.3) was recorded under Section 161 Cr.P.C. It is, therefore, quite clear that the statement of Bharat Singh (P.W.3) another star witness was recorded by the Investigating Officer on 22.07.1992 and again no proper explanation has been give by the Investigation Officer in this regard. The evidence clearly shows that Investigating Officer visited the place of occurrence immediately on 19.07.1992. The evidence again shows that Bharat Singh (P.W.3) told the entire incident to Prem Singh in the evening of 19.07.1992.

Therefore, the prosecution in the light of the aforesaid evidence has clearly failed in establishment this fact that what was the reason for causing this delay on the part of the Investigating Officer in recording the statement of these two material witnesses with such delay. Therefore, the delay in questioning these witnesses by the Investigating Officer is a serious mistake on the part of the prosecution and the same has given a big jolt to the prosecution case.

The ocular version in the present case, if we again scrutinize seriously, then it reveals that the same does not find any corroboration with the medical evidence. Bharat Singh (P.W.3) in his deposition before the court has stated that he met Smt. Anandi Devi on 16.07.1992 and she told him that her husband had beaten her and also showed the injuries to him on her legs. This witness has further stated that the injuries which he could see on 16.07.1992 were the long abrasions and these abrasions were beneath to knees but this part of the deposition is falsified from the perusal of the post mortem report which does not indicate any type of abrasions or any other type of injuries on the lower part of the legs of the deceased.

The medical versions again falsified the prosecution case in view of the statement of the Dr. S.K. Tripathi who conducted the post mortem on the body of the deceased. The doctor in his deposition before the court has stated that there was a ligature mark measuring 28 cm around the neck. He has further stated in his deposition that the death was caused due to asphyxia. This witness has clearly deposed that in case, if someone strangulates and thereafter caused the injury on the person that that injury would be in the nature of post mortem injury and will be of different in nature. The doctor has specifically stated

that in his option it was a case of hanging. The doctor has also stated that in case, if a person is hanged immediately within a period of 5 minutes of death then this type of injuries could have been caused but this part of the statement of the doctor does not find any corroboration with the ocular version as the ocular version shows that Bharat Singh (P.W.3) saw the appellant and his associated taking the deceased on their shoulder towards the jungle and this situation must have positively taken more than 5 minutes in any case. Therefore, under these circumstances this type of injury as has been found on the person of the deceased would certainly be an anti mortem injury which completely falsifies the prosecution case.

On the basis of the assessment of evidence, we come to the conclusion that the prosecution has utterly to fail in establishing the guilt of the accused/appellant beyond reasonable doubt. We are of the definite view that the prosecution case does not stand especially on the ground, firstly, there is a serious infirmity between the ocular and the medical version and secondly, the first Information Report lodged with regard to the commission of crime appears to be absolutely doubtful.

We are thus of the view that the present appeal is liable to be allowed. The conviction and sentence passed thereon deserve to be set aside.

The appeal is accordingly allowed. The conviction and sentence imposed against the appellant vide judgment and order dated 04.10.1993 passed by the trial court is hereby set aside.

(B.C. Kandpal, J.) **(P.C. Verma, J.)**

December 3, 2004:
ASWAL